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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1106

CARL LOUIS COPPOLA, *Petitioner*

vs

STATE OF FLORIDA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEALS OF FLORIDA, SECOND DISTRICT

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The Petitioner, CARL LOUIS COPPOLA, prays that a Writ of Certiorari issue to review the judgment of the District Court of Appeals of Florida, Second District, affirming in part, the orders and subsequent conviction of Petitioner by the Circuit Court of the Twentieth Judicial Circuit, in and for Collier County, Florida. The cause was remanded by the Appeals Court for a hearing upon possible "speedy trial" prejudice under the existing State law, however, several Federal claims exist which have been fully and finally adjudicated in the State Court, adversely to the Petitioner.

OPINION BELOW

The decision of the District Court of Appeals of Florida, Second District, affirming the orders of the Trial Court herein sought to be reviewed appears at [A.1] of Petitioner's Appendix to this Petition and is reported in Coppola v. State (2 Fla. DCA 1975) 318 So.2d 181. A discretionary Writ of Certiorari was issued by the Florida Supreme Court [A.2], but on 11 February 1976, that Writ was discharged [A.3]. A Petition for Rehearing upon the matters was denied 12 October 1976 [A.4], and on that same date, the Florida Supreme Court ordered that the State Court proceedings be stayed until 11 November 1976, to allow Petitioner to seek further review in this Court, as well as any further stay [A.5]. Petitioner made application to this Court for a Stay order and the same was denied on 11 November 1976.

JURISDICTION

The decision of the District Court of Appeals of Florida, Second District, was rendered on 6 August 1975 [A.1]. A Petition for Writ of Certiorari in the Florida Supreme Court was filed within fifteen (15) days of that decision, thusly staying, automatically, that decision [A.1 (a); See: Florida Appellate Rule 4.5(c) (6)]. On 13 November 1975, the Florida Supreme Court issued its Writ of Certiorari to the District Court of Appeals, Second District [A.2]. On 11 February 1976, the Court discharged its Writ of Certiorari [A.3], and on 12 October 1976, denied rehearing [A.4]. As the Petition for Writ of Certiorari filed in the Florida Supreme Court denotes, review was sought solely upon "speedy trial" grounds, a point for which the District Court of Appeals ordered the cause remanded for further hearings. This Petition is addressed to other grounds, as shall be set forth below and the decision of the District Court of Appeals, Second District, is the highest State Court in which a decision was had [See: Nash v. Florida Industrial Commission (1967) 389 U.S. 235, 88 S.Ct. 362, 19 L.Ed. 2d 438].

QUESTIONS PRESENTED

1. WHETHER DUE PROCESS AND EQUAL PROTECTION OF LAW AS CONTEMPLATED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION REQUIRE THAT EVEN IF A DEFENDANT MAY NOT BE PRESENT DURING AN IN CAMERA HEARING SEEKING A PROTECTIVE ORDER IN A CRIMINAL CASE, HE OUGHT AT LEAST BE GIVEN NOTICE THEREOF SO AS TO PRESENT ARGUMENT AND RESPONSE TO ANY SUCH MOTION BY THE STATE.

2. WHETHER THE TRIAL COURT MAY BLANKETLY ENTER AN ORDER SO NARROWLY LIMITING THE EXTENT OF EXAMINATION BY A DEFENDANT AS TO PRECLUDE THE OFFERINGS OF ANY DEFENSE AND STILL AFFORD THE DEFENDANT HIS GUARANTEES UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

CONSTITUTION PROVISIONS INVOLVED

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner, as a result of an arrest on 23 February 1973, in Collier County, Florida, was charged by an Information with the felony offense of possession of marijuana in excess of five (5) grams [A.6]. The cause was eventually set for trial, at which time Petitioner sought a continuance, waiving his rights to a speedy trial accorded pursuant to Florida Rules of Criminal Procedure 3.191. That issue is not before this Court, as it has been remanded to the trial court for further hearings concerning possible prejudice to Petitioner [See: A.1].

Pursuant to the Florida Rules of Criminal Procedure, a Defendant in a criminal case may employ depositions to aid in his preparation for trial [See: Florida Rules of Criminal Procedure 3.220 (d)]. Petitioner noticed that certain depositions of the police would be taken and on the exact day these depositions were set, the State of Florida, through its prosecutor, without providing notice or any opportunity for hearing, filed and had heard a Motion for Order of Protection [A.7]. Such an order issued, which indeed, was broader in scope than that which was sought by the State [A.8]. The defense was made aware of this order when attending the deposition [A.9], and abided thereby. The Petitioner, a week after taking the depositions, filed a Motion to Dissolve or Modify the same [A.9 (a)], which, after hearing, was denied [A.10, 10(a)].

The Court adhered to its ruling at trial [A.11], and after the State rested its case, the Court, after inquiry by Petitioner, reaffirmed its ruling which compelled the Petitioner to rest his case and release his witnesses [A.12]. These orders were affirmed by the District Court of Appeals of Florida, Second District.

FACTS

Factually, little need be said about the case except to elucidate the points presented, as the claims presented in this Petition are, in essence, ground upon fundamental constitutional procedures.

Petitioner was arrested in the early morning hours of 23 February 1973, at an unused airport in Collier County, Florida, where police had allegedly set up surveillance regarding some thirteen (13) bundles of marijuana that were allegedly stashed at the airfield.

COPPOLA allegedly arrived in a truck with another individual and drove about the airport, apparently looking for something. After looking about, COPPOLA and the other individual allegedly found some bales and backed the truck to where the bales were. They were arrested in the process of picking up the bales for loading into the truck.

The police were already aware of the existence of the marijuana prior to 1:00 o'clock A.M., but as noted the Petitioner was denied the right to make any inquiry therein. Too, another substantial load of marijuana was found at another airfield in Collier County, Florida, but in a similar manner, any inquiry into this area was precluded by the Court.

As was made known at the time of sentencing as well as pre-trial, the Petitioner was going to offer a defense of entrapment, however, that was unavailable due to the rulings of the Court. Petitioner was sentenced to the maximum term allowed by law [A.13, 14].

REASONS FOR GRANTING THE WRIT

1. The Order of the Trial Court granting the State's Motion for Order of Protection without providing any Notice to the Petitioner nor opportunity for hearing violates the guarantees of the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

Florida Rules of Criminal Procedure 3.220 (Discovery)

(c) (h) (1) provide, inter alia, as follows:

(c) Matters not Subject to Disclosure

(2) Information. Disclosure of confidential informant shall not be required unless the confidential informant is to be produced at a hearing or trial, or a failure to disclose his identity will infringe the constitutional rights of the accused.

(h) Protective Orders. Upon a showing of cause, the Court may at any time order that specific disclosures be restricted or deferred, or make such order as is appropriate provided that all material and information to which a party is entitled must be disclosed in time to permit such party to make beneficial use thereof.

(1) In Camera Proceedings. Upon request of any person, the Court may permit any showing of cause for denial or regulation of disclosures, or any portion of such showing to be made in camera. A record shall be made of such proceedings. If the Court enters an Order granting the relief following a showing in camera, the entire record of such showing shall be sealed and preserved in the records of the Court, to be made available to the Appellate Court in the event of an appeal.

In the case at bar, the prosecutor, prior to the taking of these depositions, and without any notice or opportunity for hearing filed a Motion for Protective Order and had an order thereto granted. The Order entered by the Court goes far beyond that which the Motion sought [See: Number Two below]. After being notified of this Order at an appearance at a deposition [A.9], Petitioner made a Motion to Dissolve or Modify that Order [A.9 (a)], and after a "hearing" [A.9 (b)], the same was denied [A.10].

By operation of the Fourteenth Amendment to the Constitution of the United States, the Fifth and Sixth Amendments have been made binding upon the several states [See:i.e., *Powell v. Alabama* (1932) 287 U.S. 45, 53 S.Ct. 55; cf: *Giaccio v. Pennsylvania* (1966) 382 U.S. 399, 86 S.Ct. 518, 15 L.Ed.2d 447; *Chambers v. Florida* (1940) 309 U.S. 227, 60 S.Ct. 472, 84 L.Ed. 76; *Pointer v. Texas* (1965) 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923; *Gideon v. Wainwright* (1963) 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799]. This Court has consistently held that whenever the State seeks to limit or revoke the rights, and in some cases the privilege of any citizen, that person is entitled at the least to notice and an opportunity to be heard [See: i.e., *Goldberg v. Kelly* (1970) 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287; *Bell v. Burson* (1971) 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 920; *Wisconsin v. Constantineau* (1971) 400 U.S. 433, 91 S.Ct. 507, 27 L.Ed.2d 515; *Morrissey v. Brewer* (1972) 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484; *Gagnon v. Scarpelli* (1973) 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656; *Pointer v. Texas* (1965) 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923].

In the instant case the State, through its prosecutor sought, and the State Court entered, with no notice or hearing provided Petitioner entered an order which effectively precluded effective cross-examination of all the State's witnesses

as to any of the occurrences involving their actions prior to 7:00 o'clock A.M. of the day of the arrest.

In the same vein, while a confidential informant's identity is protected, this right is not absolute, and upon a proper showing the same may be ordered divulged [See:*Roviaro v. United States* (1957) 353 U.S. 53, 77 S.Ct. 623, 1 L.Ed.2d 639; *Rugendorf v. United States* (1964) 376 U.S. 528, 84 S.Ct. 825, 11 L.Ed.2d 887; *Goldberg v. Kelly*, supra; See also Florida cases: *Rickert v. State* (4 Fla. DCA 1976) 338 So.2d 40; *Treverrow v. State* (Fla. 1967) 194 So.2d 250; *State v. Anderson* (3 Fla.DCA 1976) 329 So. 2d 424], yet the Order of the Trial Court, so broad and sweeping in its effect, precluded all inquiry that might establish that the informant ought be produced [it need be noted that Petitioner later made known he would not even, at least at that juncture, seek the identity of the informant, but rather sought the occurrences leading to the arrest to determine what defenses may have existed]. To enter such an Order without any notice or opportunity to be heard is clearly violative of the basic due process guarantees above referred.

While the State procedure may properly allow an in camera inspection of certain matters, no procedure which would preclude notice to and the presence of the Petitioner at a hearing upon a Motion for Protective Order can withstand a constitutional challenge, for the order as issued abridges fundamental guarantees afforded a Defendant in a criminal case.

That a hearing was had upon the Motion to Dissolve or Modify the Protective Order is of no particular moment, for the harm as it were, had already occurred and the Petitioner, as the hearing reflects, was operating with no knowledge as to what occurred at any part of the "ex parte hearing" that resulted in the granting of the protective order.

More disturbing, when considering the "ex parte" protective order is the scope of the order. The Motion sought only that inquiry that would reveal the confidential informant–either by conversations by the police with the informant or disclosure of the police reports–be precluded. That, in and of itself may still comport with due process [See: i.e., *Roviaro*, supra], as a Defendant, through examination, can still learn if the informant may have been an active participant in alleged criminal activity and which thusly might lead to further discovery and defenses, especially at trial.

The order of the trial court, however, goes not only far beyond that which was sought, but, as shall be more particularly elucidated at the least below, violates the very principles of fair trial and due process of law. The Motion sought, inter alia, to have protected:

"4. The report of the investigating officers prior to 1:00 A.M., February 23, 1973, should be protected from disclosure as said reports would disclose the name of the confidential informer.

(a) Said reports contain no exculpatory information.

(b) The failure to disclose the identity of said confidential informer, or the reports of the officers will not infringe the constitutional rights of the accused."

This was offered to the Court; an order, entered upon the ex parte Motion, provided in part:

"1. That no confidential informants will testify for the State in this cause.

(a) The Court specifically forbids any confidential informants from testifying in this cause.

(b) The State does not have to disclose the identity of any confidential informants *nor activities of any* confidential informants or officers, in this cause, prior to 1:00 A.m., February 23, 1973.

2. That the constitutional rights of the Defendant, Carl Louis Coppola, will not be infringed by the non-disclosure of the identity or activities of any confidential informants *nor the activities of any officers* in this cause, *prior to* 1:00 A.M.,February 23, 1973.

3. That nothing exculpatory is contained in the testimony or activities of the officers or the confidential informants prior to 1:00 A.M., February 23, 1973.

(a) *No disclosure will be made by officers* or confidential informants of activities or conversations prior to 1:00 A.M., February 23, 1973."

Clearly, the Order went far beyond what was sought, and all was done without any notice to the Petitioner.

After the Petitioner filed his Motion to Dissolve or Modify the Protective Order, a hearing was had upon the same, and that illustrates the gross violence that was visited upon Petitioner's constitutional rights.

Petitioner's counsel, at this hearing, made known that was possessed of certain knowledge that ought have been investigated and inquired into, for various reasons, including entrapment (A.9b, pp. 2, 3, 4,). To this, the prosecutor, in part, replied to the Court:

> Mr. Hagaman: "Your Honor, I am sure you recall the testimony that was previously given since you were the Judge that had the hearing.***
>
> You gave the opinion there was no entrapment."
> (A.9b p. 5)

Without any confrontation, even notice, the Court and the prosecutor had a hearing, apparently took testimony and they concluded, with no examination of the witnesses by the Petitioner that there was nothing exculpatory in the case and that no entrapment would lie, and therefore, the Petitioner would be precluded full cross-examination. The very meaning of the words due process of law negative these actions by the State of Florida.

As this Court noted in *Goldberg v. Kelly*, supra, the fundamental requisite of due process of law is the opportunity to be heard and such hearing must be at a meaningful time and in a

meaningful manner [See also: *Goss v. Lopez* (1975) 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725]. This due process includes the right to present every available defense [*Lindsey v. Normet*, (1972) 405 U.S. 56, 92 S.Ct. 862, 31 L.Ed.2d 36; *Jenkins v. McKeithen* (1969) 395 U.S. 411, 89 S.Ct. 1843, 23 L.Ed. 2d 404].

These rules are binding upon the State of Florida, their benefits denied Petitioner and for this, the Writ of Certiorari of this Court ought issue.

2. The trial court may not blanketly enter an order so narrowly limiting the extent of examination by a Defendant as to preclude full cross-examination of the witnesses and the offerings of a defense and still afford the Defendant his constitutional guarantees.

The limitations of examination entered without notice to the Petitioner have been discussed above. The question next presented is whether the Court may properly limit cross-examination as was done in this fashion.

The order of the Court limited *all* examination, apparently on the ipsie dixit of the prosecutor, to after 1:00 A.M. on the morning of the arrest, the arrest occurring some few hours thereafter. That the Court adhered to that ruling is evidenced from the following excerpts from the trial transcript:

[Cross-Examination of Deputy Sheriff Mills]

Q [by Mr. Adams, defense counsel]

"Q That box over there–I'm a little premature, but did you ever see that before you were up there?

A No, sir.

Q And you have no knowledge of that that you know of?

A No. It means nothing to me.

Q Okay. This surveillance that was set up, did you all have a briefing on it, that is, you and your fellow officers?

MR. HAGAMAN: Object to that. We are talking about any conversation or briefings–

THE COURT: What was the cut off time and date on that?

MR. HAGAMAN: 1:00

MR. ADAMS: 1:00 A.M.

THE COURT: 1:00 A.M. on that morning?

MR. ADAMS: Yes.

BY MR. ADAMS:

Q In your experience, will you tell the Jury what it means to you as an officer of the law?

A Entrapment would be a process as to where an officer would cause an individual to be involved or commit a crime, present him with the opportunity and ability and so forth to commit this crime when he would not have had this otherwise. In a nutshell this is the way I see entrapment.

Q Officer, let me compliment you. That is a great definition. You have received that from your training and experience?

A That is the way I break it down.

Q You try to avoid that situation if possible?

A Always.

Q During the course of everything that happened from 1:00 and afterward, was there anything else that occurred which you can relate to this Jury wherein Carl Coppola might have known that that stuff in those sacks out there was illegal contraband, any statement, any tangible evidence, any notes, anything at all?

A From observing him, it was obvious to me he was searching for something that he didn't want anybody else to know he was searching for.

Q In the middle of the night?

[Cross-Examination of
former Deputy Sheriff Cunningham]

Q [by Mr. Adams, defense counsel]

Q At least hopefully. With regard to this case, what was your position on the 23rd of February of 1973? Was this your case, were you the head officer for this case?

A Yes, sir, I was.

Q Were you the one who, in working with your fellow officers, set up this surveillance procedure that was followed wherein Coppola and Urish were arrested?

A Yes, sir, I did.

Q And I believe you testified you saw these sacks here in evidence before the arrest of Coppola. Now I'm kind of trying to be cautious. There is a Protective Order which has been referred to by the Court. But you did see the sacks prior to the actual arrest of Coppola?

A Yes, sir, I did.

Q And it has been testified to that 13 sacks were put—not put, but rather stashed in a particular location out here at an airport. Were you aware of that?

A Yes, sir.

Q And as head officer on this case, were you responsible for either yourself or officers under your direction stashing those sacks out at that location?

MR. HAGAMAN: Objection, Your Honor. I submit that the Protective Order picks up from 1:00. If we are talking about 1:00, anything he did after that time–anything prior to that time is covered by the Protective Order.

THE COURT: If it took place after 1:00, I will allow the question, otherwise I won't allow it. If the answer to that question can be answered with relation to any time after 1:00 A.M. the 23rd of February, why, you can answer it. Otherwise, you don't have to.

THE WITNESS: It cannot be.

THE COURT: All right. Sustain the objection.

BY MR. ADAMS:

Q At least as of 1:00 A.M. on the 23rd of February, you were aware of the fact that there was surveillance being conducted on a stash in the vicinity of an airport?

A Yes, sir, I was aware of and I was in charge of it.

Q And you were in charge of it?

A That is correct.

Q Did you have any conversation with the Defendant Coppola in the early morning hours or any time thereafter up until today? I'm not talking about fishing. I'm talking

about something that would have bearing on this charge.

A No.

Q I know you may have seen him around the hall here and I'm not talking about that. Were you a party to this, did you overhear any conversation with other officers that Coppola may have had?

A No, I didn't.

Q Well, being in charge of this situation, did you attempt to interview the Defendant Coppola?

A Yes. When he was in the jail–

Q The answer is "yes"?

A As far as attempt.

Q Did attempt to interview the Defendant Coppola?

A He was asked.

THE COURT: Just answer the question yes or no.

A Yes, I attempted.

Q Will you tell the folks what you did in attempting to interview Coppola?

A I asked my men if he had anything to say, if he wished to give a statement.

Q Excuse me. Was that part of your answer, you asked your man if he had anything to say?

A Right. When I came in I asked the other officers who had arrested him if in fact he wished to make a statement and they had advised me he did not."

Other witnesses for the State were solely for purposes of depicting the chain of evidence and the actual analysis of what the seized substance tested to be.

After the State rested, the following occurred:

Thursday Morning, December 5, 1974
9:00 A.M.

DEFENSE TESTIMONY

(The Defense, in order to maintain the issues on its part, presents the following testimony.)

MR. ADAMS: If it please the Court, before the Jury comes in this morning, the State has rested and I made a Motion for a Directed Verdict of Acquittal which was denied by the Court and at this time I just want to ask again for the Court if that Protective Order issued by the Court still stands?

THE COURT: Yes.

MR. ADAMS: Nothing prior to 1:00 A.M. February 23 1973, by an informant or officers of the law should be known?

THE COURT: Exactly.

MR. ADAMS: In view of that order of protection, the Defendant will rest.

THE COURT: Very well.

MR. ADAMS: I did have the Sheriff and two other Deputies subpoenaed and on call, as the Court knows.

THE COURT: Yes.

MR. ADAMS: And it would be futile–

THE COURT: Very well. That forecloses any possibility of rebuttal by the State.

(Jury was brought in)

THE COURT: Will counsel for the State and counsel for the Defendant stipulate to the presence of the same Jury as yesterday?

MR. ADAMS: Yes, sir, Your Honor, for the Defendant.

MR. HAGAMAN: The State will so stipulate.

THE COURT: Very well. May we proceed?"

Then, at sentencing and bond motions, the Petitioner

made known the following:

[Excerpt of examination of Carl Louis Coppola at a hearing held 27 January 1975]

CROSS EXAMINATION

BY MR. HAGAMAN:

"Q Prior to the time that you were tried in this case you moved for a continuance and you waived speedy trial. Is that true?

A I guess my attorney did, yes. Back in July, I think, of '73.

Q Was that with your accord or did he do that against your will?

A No, that was with my accord.

Q Then on December 5th of 1974 I believe that was the day of the trial, anyway, if I am incorrect, the date you were tried for this case you had previously pled not guilty; is that correct?

A I believe the Court pled us not guilty.

Q All right. And then you went to trial and there was a conviction, correct?

A Correct.

Q And then you subsequently were interviewed by the probation and parole supervisor; is that correct?

A Yes, sir.

Q And after the matter was over, in an effort to cooperate with them you explained to them that you had come over here to get this marijuana; is that correct?

A Yes, sir.

Q And that you didn't have to pay any money out front to get it?

A The way I explained it to him is–

MR. ODOM: If it please the Court, I will object to the testimony of what he's told the probation officer in the course of the investigation.

THE COURT: On what grounds? I assume you are attempting to impeach him, aren't you?

MR. HAGAMAN: He alluded to what was not included and I'm alluding to what is on the basis of his motion that he should be granted–

THE COURT: What I am talking about, the purpose of your question is to impeach this witness or something?

THE WITNESS: I will answer his question.

MR. ODOM: No, you be quiet.

MR. HAGAMAN: There is the possibility of impeachment, but also, in accord with the Younghans case I want to pursue what the standard was and I think his answer, although I submit I don't want to use it or any other question, because he has been convicted of it and pled not guilty and I want to go into what he told the probation officer as to if he did or did not do it.

THE COURT: Overrule the objection. Go ahead and answer.

A You want me to tell the whole story what I told the probation officer?

BY MR. HAGAMAN:

Q No. I want to know in answer to my question if you in fact came over to pick it up and you were caught and didn't have to pay any money to get it?

A But that is not all what I told him.

MR. ODOM: If it please the Court. I want to tell what we will be getting into and that is if the Defendant committed the act charged with and if he has any defense. If he goes into the other part of it, I want the Court to let me go into the other part, which is entrapment.

MR. HAGAMAN: That is not a viable defense after a trial.

MR. ODOM: We tried to raise it during the trial.

MR. HAGAMAN: No, sir. It was not raised during the trial. I tried the case and the Judge was there and it wasn't raised.

THE COURT: It wasn't raised to my knowledge.

MR. ODOM: You couldn't go into it because of what happened prior to a certain hour. And the only way you can prove entrapment is what happened prior to surveillance.

MR. HAGAMAN: I submit the entrapment goes out the window when we are talking right here.

THE COURT: All we are talking about here is whether or not this man should be held without bail or granted bail for appeal. What is the relevancy of the question? I'm curious.

MR. HAGAMAN: I don't know. His answer is concerned with whether or not the errors are merely technical procedure errors or if there is any substance to them. If we have a man in jail admitting that he committed a crime in addition to his having pled not guilty and been found guilty during the time he is waiting to see if there is any technical errors, he is not having his constitutional rights because—

THE COURT: The Court is aware and I think certainly knows that a Jury found this man guilty beyond a reasonable doubt.

MR. ODOM: All we say is we have good

grounds for appeal. The District Court will make that decision.

THE COURT: I know it is not up to me. I see no relevancy other than the matter of impeachment.

MR. HAGAMAN: I would like to have this answer for that possible purpose.

THE COURT: All right. Answer the question for that limited reason.

A Do I have to answer part of a question or do I have to answer the whole question?

BY MR. HAGAMAN:

Q I would like you to answer as simply as you can. If you feel you want to elaborate, you can do that.

A I want to say what I did tell the man.

Q Fine.

A And the reasons that I did come over here.

Q Fine.

A The reason I did come over here is because the people came to me and told me to come over here and get it and the people that told me to get it were working for this Collier County Sheriff's Department as informers and entrapment and I told him that along with this statement. I didn't say I come over and got it and didn't have to put any money up. The people asked me to come over and pick it up and the people who asked me this were working for the police department over here. If that is part of the thing, fine.

Q Is that the only time you have ever bought or sold drugs in your life?

A I'm not on trial for anything besides here.

Q I know you are not.

MR. ODOM: Object. It is immaterial to the hearing.

MR. HAGAMAN: He is answering questions with a self-serving statement not contained in here and I ought to be able to impeach him on something on the record.

THE COURT: Overrule the objection.

BY MR. HAGAMAN:

Q Have you?

A What are you talking about now?

Q You were saying on that particular occasion you came over here because in your opinion you were told to come over here by people you believed were working as informants for

the Collier County Sheriff's Department?

A Yes, I do.

Q Has there ever been any occasion in your life prior to today where you bought or sold drugs other than that occasion?

MR. ODOM: I instruct the Defendant not to answer that question because of Article 6 of the Constitution of the United States and I think Article 5. He should not be required to answer in this type of hearing where he is on the stand for a limited purpose of establishing his right to bail.

THE COURT: I recognize his rights under the Fifth. Go ahead, Mr. Hagaman.

MR. HAGAMAN: And you are instructing him not to answer that question?

THE COURT: Right.

MR. HAGAMAN: Fine I will move on to another.

BY MR. HAGAMAN:

Q You indicated in answer to a question you were married presently?

A Yes.

Q Are you legally married?

A Yes.

Q When were you married?

A 1970.

Q Are you presently married to the same person you were married to in 1970?

A Yes.

Q Where were you married?

A Broward County.

Q Do you recall where in Broward County?

A Yes.

Q Where?

A It was—I can't tell you the exact address. It was a chapel in Wilkes Manors.

Q Okay.

MR. HAGAMAN: I have no further questions.

THE COURT: Anything else?

MR. ODOM: I have no further questions.

THE COURT: Do you have any further evidence?

MR. ODOM: No, sir, as long as the Court will renew the motion I previously filed. It sets out what we think would be grounds for appeal and raises a question that is debatable. I will tell the Court we have already ordered a transcript and are not asking for a delay as far as filing.

THE COURT: I believe the District Court said you were not going to get it anyway.

MR.ODOM: I believe I can get an extension. I will not ask for it.

THE COURT: Does the State have anything?

MR. HAGAMAN: Yes. I would like to renew this motion briefly.

THE COURT: Have you filed an Assignment of Errors, Mr. Odom?

MR. ODOM: Not yet. I have twenty days.

THE COURT: I understand. Go ahead, Mr. Hagaman.

MR. ODOM: If it please the Court. In the motion I filed in the District Court I pointed out what I considered two grounds, and at that time I did not have the transcript and I just got it and haven't read it.

THE COURT: What is it you cite in that?

MR. ODOM: One is the Protective Order of the Court where the defense was not allowed to go back of a particular time in interrogating. And the other would be the fact that it was sixteen months from the date of arrest to the date of trial, recognizing the fact that the Defendant made a motion for continuance. I recognize that, but there is more to the speedy trial rule than six months.

THE COURT: We had a very good argument on that day.

MR. ODOM: I figured you did. That is why I didn't argue it any more.

As this Court can note, no inquiry was made as to the Informant; rather inquiry was attempted as to the actions of the police in regards to the placing of that marijuana. The trial court had a duty to allow questioning and then [if it could properly could] upon proper objection, preclude inquiry into that area that might reveal the informant.

The blanket order entered herein, Petitioner submits, is somewhat analgous to the order entered by a State court, and denounced as constitutionally impermissible by this Court in *Davis v. Alaska* (1974) 415 U.S. 311, 94 S.Ct. 1105, wherein that court issued a protective order which precluded inquiry by that Defendant into the juvenile record of a crucial state witness.

This court, for a number of reasons, held that action to be a denial of the right to confront and cross-examine guaranteed by the Sixth and Fourteenth Amendments. As the Court noted:

> "Cross Examination is the principal means by which the believability of a witness and the truth of his testimony are tested. Subject always to the broad discretion of a trial judge to preclude repetitive and unduly harrassing interrogation, the cross-examiner is *not only permitted to delve into the witness' perceptions and memory*, but the cross-examiner has traditionally been allowed to impeach, ie, discredit the witness."
>
> (Emphasis supplied)

[Compare: *Green v. McElroy* (1959) 360 U.S. 474 at 496, 79 S.Ct. 1400 at 413].

No matter how limited an entrapment defense might be (an Petitioner does not concede that this alone was the only reason to allow full cross-examination), it is clear that every jurisdiction, State and Federal have had "pure" entrapment cases.[1]

[1] Petitioner would point out that Paul Lawrence, an undercover narcotics agent for the State of Vermont was recently sentenced to ten years imprisonment for framing at least 106 persons on drug charges. *State v. Lawrence*, (Vt. S.Ct. 1970) 340 A.2d 67.

The evidence sub judice depicts a situation where the police knew a lot more than was testified to, much of which could well have been favorable to Petitioner, particularly in light of his sworn remarks during cross-examination at his sentencing and bond hearing.

This Court has persistently and consistently recognized the right and necessity for full and effective cross-examination [See,ie: *Mattox v. United States* (1895) 156 US 237, 242; *Salinger v. United States* (1926) 272 US 542, 548; *Alford v. United States* (1931) 282 US 687, 692, wherein the court, inter alia, stated "prejudice ensues from a denial of the opportunity to place the witness in his proper setting and put the weight of his testimony and his credibility to a test, without which the jury cannot fairly apprise him"].

These rules are, of course, binding upon the State of Florida [See: *Pointer v. Texas* (1965) 380 U.S. 400; Compare: *Douglas v. Alabama* (1965) 380 U.S. 415). The decision authored in *Pointer*, supra, contained the following cogent expression at page 405:

> "There are few subjects, perhaps, upon which this Court and other courts have been more nearly unanimous than in their expressions of belief that the right to confrontation and cross-examination is an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal. Indeed, we have expressly declared that to deprive an accused of the right to cross-examine the witnesses against him is a denial of the Fourteenth Amendment's guarantee of due process of law".

[See also: *Barber v. Page* (1968) 390 U.S. 719].

Too, this Court in a case of more recent import, *Smith v. Illinois* (1968) 390 U.S. 129, this Court found that the sustaining of the prosecutor's objections to questions on cross-examination as to the witness' correct name and place of living, by the trial court, on an apparent theory that the witness might be endangered, was violative of the Sixth Amendment right to confrontation. *Alford*, supra, was in part, the basis for this decision.

No theory could be advanced that would support the order herein sought to be reviewed, for this clearly denied Petitioner his rights to confront and cross-examine the witnesses against him. And, in a similar vein, the order so hamstrung an otherwise fully competent trial attorney, as to, through direct state action, deny Petitioner his right to effective assistance of counsel [Compare: *Gideon*, supra], also guaranteed by the Sixth and Fourteenth Amendments to the Constitution of the United States.

One other matter, also arising under the Sixth Amendment, need be presented to the Court. Not only did the Court by virtue of its protective order, deny the Petitioner confrontation, but also, that protective order was employed to prohibit Petitioner from calling witnesses on his own behalf.

Petitioner made known to the trial court that he had the sheriff and two deputies under subpoena and asked, then, if the Court was still going to adhere to its protective order ruling on the Defendant's side of the case. The Court answered in the affirmative and the Petitioner, therefore, rested his case.

As clearly as a Defendant has a right to confront and cross-examine witnesses against him, so too, he has a right to present witnesses and evidence on his own behalf [See: i.e., *Morrissey v. Brewer*, supra]. This very basic right was denied Petitioner, as was his guaranteed right to a fair trial.

CONCLUSION

On the basis of the foregoing, the Petition for Writ of Certiorari ought be granted.

Respectfully submitted,

FRED HADDAD
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429 South Andrews Avenue
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RAY SANDSTROM
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BY:
RAY SANDSTROM

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition for Writ of Certiorari has been furnished by mail to the Office of the Attorney General, 419 Stovall Professional Building, 304 North Morgan Street, Tampa, Florida, 33602, this 16 December 1976.

BY:
RAY SANDSTROM

APPENDIX

COPPOLA v. STATE
Cite as, Fla.App., 318 So.2d 181

Carl Louis COPPOLA, Appellant,
v.
STATE of Florida, Appellee. No. 75-57

District Court of Appeal of Florida,
Second District

Aug. 6, 1975.

Defendant's motion for discharge for alleged failure to accord him a speedy trial was denied, and after trial in the Circuit Court, Collier County, Harold S. Smith, J., defendant was convicted and sentenced for violation of the state drug abuse law. Defendant appealed. The District Court of Appeal held that where the record reflected nothing more than defendant's motion for discharge and a minute book entry indicating denial of the motion, and in view of a 16-month delay and silent record, the case would be remanded with directions to hold an evidentiary hearing to determine whether defendant was denied his constitutional right to a speedy trial.

Remanded with directions.

Hobson, Acting C.J., dissented and filed opinion.

1. Criminal Law 576(1)

Rule concerning grant of pending motion for discharge when trial of accused does not commence within periods of time established by rule, comes into play after motion for discharge has been filed, and rule was inapplicable where trial occurred within a few days within filing of motion for discharge. 33 West's F.S.A. Rules of Criminal Procedure, rule 3.191(d)(3); West's F.S.A. Const. art. 1 16.

2. Criminal Law 573,576(1)

Even though accused has filed for continuance which is granted, he is still entitled to speedy trial under state Constitution, and if he is not accorded speedy trial he should be discharged. 33 West's F.S.A. Rules of Criminal Procedure, rule 3.191(d)(3); West's F.S.A. Const. art. 1, 16.

3. Criminal Law 1181

Where record on appeal reflected nothing more than defendant's motion for discharge and minute book entry indicating denial of motion, and in view of a 16-month delay and silent record, case was remanded with directions for trial court to hold evidentiary hearing to determine whether defendant was denied constitutional right to speedy trial. 33 West's F.S.A Rules of Criminal Procedure, rule 3.191(d)(3); West's F.S.A. Const. art. 1, 16.

Bruce M. Lyons of Di Guilian, Spellacy, Berstein, Lyons & Sanders, Ft.Lauderdale, and Archie M. Odom of Farr, Farr, Haymans, Moseley & Odom, Punta Gorda, for appellant.

Robert L. Shevin, Atty. Gen., Tallahassee, and Richard G. Pippinger, Asst. Atty. Gen., Tampa, for appellee.

PER CURIAM.

Appellant was arrested at an airfield in rural Collier County while loading sacks of marijuana into a truck. He was tried and convicted for violation of the Florida Drug Abuse Law and sentenced to five years. His point on appeal directed to a pretrial protective order is without merit. The speedy trial question is more difficult.

Appellant was arrested on February 23, 1973. An information was filed on March 6,1973. On March 16, 1973, he entered a plea of not guilty and the cause was set for trial July 23, 1973. Appellant then filed a motion for continuance in which he specifically waived the right to speedy trial. After this motion was granted, the record reflects that the next activity in the case was a notice served on November 18, 1974, setting a trial date of December 2, 1974. On November 25, 1974, appellant filed his motion for discharge for failure to have a speedy trial, which was denied on the same date. Trial was held on December 4, 1974, which resulted in his conviction and sentence.

[1,2] In *Negron v. State*, Fla.1974, 306 So.2d 104, the Supreme Court held that a four and one-half month delay in going to trial following a continuance obtained by the state violated the accused's right to a speedy trial. Some of the language of this opinion is susceptible to the interpretation that once a continuance has been granted at the request of the defendant, the provisions of Rule 3.191 (d)(3) RCrP, nevertheless, require him to be brought to trial within 90 days. However, as we read this rule, it comes into play after a motion for discharge has been filed.[1] *See State ex rel. Butler v. Cullen*, Fla.1971, 253 So.2d 861. In the case *sub judice*, since the trial occurred within a few days within the filing of the motion for discharge, the 90 day provision of Rule

1. RCrP 3.191(d)(3): *"Continuances, Effect on Motion:* If trial of the accused does not commence within the periods of time established by this rule, a pending motion for discharge shall be granted by the court unless it is shown that (i) a time extension has been ordered as provided in (d)(2), or (ii) the failure to hold trial is due to the unexcused actions or unexcused decisions of the accused, or of a codefendant in the same trial. If a continuance or delay is attributable to the accused and is not excused, the pending motion for discharge shall as motion by the State be voidable by the court in the interests of justice; provided, however, trial shall be scheduled and commence within 90 days."

3.191 (d)(3) RCrP was inapplicable. Yet, we wholeheartedly agree that even though the accused has filed for a continuance, which is granted, he is still entitled to a speedy trial under Section 16, article1, Declaration of Rights of the Florida Constituion, F.S.A. If he is not accorded a speedy trial under Section 16 he should be discharged.

The leading case on the constitutional right to a speedy trial is *Barker v. Wingo*, 1972, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed. 2d 101. This case involved a claim of the denial of the right to speedy trial under the U.S. Constitution in a case arising from a state which had no speedy trial rule. Speaking for the court, Justice Powell stated:

"We, therefore, reject both of the inflexible approaches–the fixed-time period because it goes further than the Constitution requires; the demand-waiver rule because it is insensitive to a right which we have deemed fundamental. The approach we accept is a balancing test, in which the conduct of both the prosecution and the defendant are weighed.

"A balancing test necessarily compels courts to approach speedy trial cases on an *ad hoc* basis. We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant."

The court observed that all four factors were related and must be considered together with such other circumstances as may be relevant to determine whether there was a deprivation of the right to speedy trial. The court concluded that even though there was a five year delay between Barker's arrest and trial, he was not deprived of a speedy trial because he suffered only minimal prejudice due to the delay and because he had not made any serious efforts to bring the case to trial.

While Florida is at liberty to interpret its own constitution more strictly, our Supreme Court in *State ex rel. Butler v. Cullen, supra*, adopted a position strikingly similar to *Barker v. Wingo* when it said:

"It appears on the face of the petition that petitioners requested a continuance so that they would have additional time within which to prepare their defense. When the continuance was granted, the time limitations in the rule were no longer applicable and the Court had the right and authority to set the case for trial within a reasonable time.

"In other words, the purpose of the Speedy Trial rule is to implement the practice and procedure by which a defendant may seek and be guaranteed his speedy trial. When the time limitations

set forth in the rule were waived by petitioners seeking a continuance, then it became incumbent upon the trial court to set a trial date far enough in advance to allow the petitioners adequate time for preparation of their defenses, but, also, guaranteeing to the petitioners their constitutional right to a speedy trial. The facts and circumstances of each case may differ.

* * * * * * * * * * *

"When the continuance was granted and the time limitations set forth in the rule were no longer applicable, the trial judge was nevertheless required to grant petitioners a speedy trial. In the absence of the time limitations specified in the Speedy Trial rule, the right to a speedy trial is necessarily relative. It is consistent with delays and the question of whether a trial date affords petitioners a speedy trial must be determined in the light of the circumstances of the particular case as a matter of judicial discretion. The mere lapse of time before trial is not the only factor to be considered under such circumstances. Any unreasonable delay arising from the negligence of the prosecution without fault or consent by the accused violates the guaranty of a speedy trial."

[3] The record in the instant case reflects nothing more than appellant's motion for discharge and a minute book entry indicating denial of the motion. In view of the sixteen month delay and a silent record, the case is hereby remanded with directions for the trial court to hold an evidentiary hearing following the principles of *Barker v. Wingo, supra*, to determine whether appellant was denied his constitutional right to a speedy trial. Should the judge conclude that the appellant's speedy trial rights were violated, he should vacate the judgment and sentence. A copy of the order should be sent to this court, and the state would have a right to file a new appeal from that order. If the trial judge should determine that appellant's speedy trial rights were not violated, he should enter an order setting forth his findings in support of this conclusion. This order, together with the record of the hearing, should then be transmitted to this court for review of its legal sufficiency.

Remanded with directions.

BOARDMAN and GRIMES, JJ., concur.

HOBSON, A.C.J., dissents with opinion.

HOBSON, Acting Chief Judge (dissenting).

I think the majority opinion is in direct conflict with our Supreme Court opinions in *Negron v. State* and *Butler v. State, supra*. In Negron, I interpret the opinion to hold that even though a continuance has been granted at the requestt of the defendant, the provisions of Rule 3.191(d)(3), RCrP, nevertheless required him to be brought to trial within 90 days.

In my opinion the Butler case, *supra*, requires the discharge of the appellant in this cause. The majority opinion recognizes that even though the accused has filed for a continuance, which is granted, he is still entitled to a speedy trial under Section 16, Article I, Declaration of Rights. To me, a delay of sixteen months from the date the continuance was granted until the State noticed the appellant for trial is unreasonable and is a denial of a speedy trial.

Our Speedy Trial Rule 3.191(a)(1) requires that

> "every person charged with a crime by indictment or information shall without demand be brought to trial * * * within 180 days if the crime charged be a felony, capital or non-capital, and if not brought to trial within such time shall upon motion timely filed with the court having jurisdiction and served upon the prosecuting attorney be forever discharged from the crime; . . ."

The appellant, herein, was available for trial for a period of sixteen months from the time he moved for a continuance until he was notified by the State of a trial date. Under the pronouncements in Negron and Butler, *supra*, this was an unreasonable delay of a speedy trial and the appellant is entitled to be discharged.

CARL B. SMITH & SONS, INC., Appellant,

v.

Elizabeth Henderson TINKLER, Appellee.

No. 74-333.

District Court of Appeal of Florida, Second District.

Aug. 8, 1975.

Rehearing Denied Sept. 4, 1975.

Appeal was taken from a final judgment entered in the Circuit Court for Hillsborough County, Robert W. Patton, J. The District Court of Appeal, Hobson, J., held that where original complaint was filed within time allowed under statute of limitations, final amended complaint, which was claim upon which case went to trial, and which was filed after statute of limitations had run, related back to original complaint.

Affirmed.

Limitation of Actions 127(1)

Where original complaint was filed within time allowed unter statute of limitations, final amended complaint, which was claim upon which case went to trial, and which was filed after statute of limitations had run, related back to original complaint.

184 Fla. (continued)
318 SOUTHERN REPORTER, 2d SERIES

M. W. Graybill and Ted R. Manry III, of Macfarlane, Ferguson, Allison & Kelly, Tampa, for appellant.

Gerald W. Nelson and Charles E. Bergmann of Yado, Keel, Nelson & Casper, Tampa, for appellee.

HOBSON, Judge.

Appellant appeals a final judgment entered against it and in favor of appellee.

The first point on appeal involves the question of relation back of the claim contained in the final amended complaint to the "cause of action" stated in the original complaint. The original complaint was filed within the time allowed under the Statute of Limitations. Several amended complaints were subsequently filed which also were within the Statute of Limitations. The final amended complaint which was the claim upon which the case went to trial was filed after the Statute of Limitations had run.

We concur with the trial court that under *Keel v. Brown*, Fla.App.2d 1964, 162 So.2d 321; *Brown v Wood*, Fla. App.2d 1967, 202 So.2d 125; and *Handley v. Anclote Manor Foundation*, Fla.App 2d 1971, 253 So.2d 501, the final amended complaint in the instant cause relates back to the original complaint and the trial court was eminently correct in so ruling.

The remaining two points on appeal attack the sufficiency of the evidence to sustain the jury's verdict. We have carefully reviewed the record on appeal and have determined, as the trial judge did,

IN THE SUPREME COURT OF FLORIDA

JULY TERM, 1975

THURSDAY, NOVEMBER 13, 1975

CARL LOUIS COPPOLA,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

** CASE NO. 47, 905

** DISTRICT COURT OF APPEAL, SECOND DISTRICT, 75-57

** ORDER ALLOWING CERTIORARI AND DISPENSING WITH ORAL ARGUMENT

The Petition for a Writ of Certiorari to the District Court of Appeal, Second District is granted and oral argument is dispensed with pursuant to Rule 3.10 e Florida Appellate Rules.

The Clerk of the District Court of Appeal shall file the original record on or before December 1, 1975; the petitioner's brief shall be filed on or before December 1, 1975; respondent's brief shall be filed on or before December 11, 1975; petitioner's reply brief shall be filed on or before December 18, 1975.

ENGLAND, SUNDBERG AND HATCHETT, JJ., CONCUR
OVERTON, J., WOULD GRANT WITH ORAL ARGUMENT
ADKINS, S.J., ROBERTS AND BOYD, JJ., DISSENT

A True Copy

TEST

y

CC: Hon. Wm. A. Haddad, Clerk
Hon. Bruce M. Lyons
Hon. Archie M. Odom
Hon. Richard G. Pippinger

Sid J. White
Clerk, Supreme Court of Florida

(signed) Kay D. Gert

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DETERMINED.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, 1976

CARL LOUIS COPPOLA,)
Petitioner,)
vs.)
STATE OF FLORIDA,) CASE NO. 47, 905
Respondent.) DCA CASE NO. 75-57

Opinion filed February 11, 1976

Writ of Certiorari to the District Court of Appeal, Second District

Bruce M. Lyons of Di Giulian, Spellacy, Bernstein, Lyons and Sanders; and Archie M. Odom of Farr, Farr, Haymans, Moseley and Odom, for Petitioner

Robert L. Shevin, Attorney General; and Richard G. Pippinger, Assistant Attorney General, for Respondent

PER CURIAM

We tentatively granted certiorari and dispensed with oral argument in this case in order to resolve an apparent conflict between the decision of the Second District Court of Appeal, reported at 318 So.2d 181, and the decision of this Court in *Negron v. State*, 306 So.2d 104 (Fla. 1974). After reviewing the matter we have concluded that there is no decisional conflict to vest this Court with jurisdiction under Article V, 3(b)(3) of the Florida Constitution.

In this case, a criminal defendant requested and was granted a trial continuance in a motion which specifically waived his right to a speedy trial under Florida Rule of Criminal Procedure 3.191. After the passage of more than 90 days, defendant filed a motion for discharge which the trial judge denied. The district court affirmed the trial judge's denial, holding that Rule 3.191 (d)(3) did not entitle defendant to an immediate discharge.

In *Negron*, the State was granted a continuance without any waiver by the defendant of speedy trial rights under the Rule. We there held that a motion for discharge must be granted after the passage of 90 days. In *Negron*, the Court had under consideration a motion for discharge which fell within the mandate of Rule 3.191(d)(3) and beyond any of the exceptions contained therein. In this case there was a waiver within Rule 3.191(d)(2)(i) and the exception contained in Rule 3.191 (d)(3)(i) applied.

The writ of certiorari is discharged.

ADKINS, C.J., ROBERTS, BOYD, OVERTON, ENGLAND, SUNDBERG and HATCHETT, JJ., Concur

IN THE SUPREME COURT OF FLORIDA

TUESDAY, OCTOBER 12, 1976

CARL LOUIS COPPOLA,

Petitioner, **

vs. ** CASE NO. 47, 905

STATE OF FLORIDA, **

Respondent.

On consideration of the Petition for Rehearing filed by petitioner, it is ordered that said petition is denied.

OVERTON, C.J., ROBERTS, BOYD, ENGLAND, SUNDBERG, AND HATCHETT, JJ., CONCUR

ADKINS, J., DISSENTS

A True Copy

TEST:

y

CC: Hon. Wm. A. Haddad, Clerk
Hon. Harold S. Smith, Judge
Hon. Bruce M. Lyons
Hon. Archie M. Odom
Hon. Robert L. Shevin
Hon. Richard G. Pippinger

(signed)
Sid J. White
Clerk Supreme Court.

IN THE SUPREME COURT OF FLORIDA

TUESDAY, October 12, 1976

CARL LOUIS COPPOLA,

Petitioner, **

v. ** CASE NO. 47,905

STATE OF FLORIDA, **

Respondent.

Upon consideration of the Motion for Stay of Mandate filed by petitioner and Response thereto, it is ordered that said motion is hereby granted and proceedings in this Court and in the District Court of Appeal, Second District, and in the Circuit Court in and for Collier County, Florida, are hereby stayed to and including November 11, 1976 to allow petitioner to seek review in the Supreme Court of the United States and obtain any further stay from that Court.

A True Copy

TEST:

(signed)
Sid J. White
Clerk Supreme Court.

y
CC: Hon. Wm. A. Haddad, Clerk
Hon. Harold S. Smith, Judge
Hon. Bruce M. Lyons
Hon. Archie M. Odom
Hon. Robert L. Shevin
Hon. Richard G. Pippinger

In The Circuit Court of the Twentieth Judicial Circuit in the State of Florida
For Collier County,
in the year of our Lord One Thousand Nine Hundred and Seventy-Three

STATE OF FLORIDA — INFORMATION FOR

vs. — VIOLATION OF FLORIDA DRUG ABUSE LAW

CARL LOUIS COPPOLA

STATUTE: 404.02(5)

In the Name and by Authority of the State of Florida:

Joseph P. D'Alessandro, State Attorney of the Twentieth Judicial Circuit of the State of Florida, prosecuting for the State of Florida, in the County of Collier under oath information makes that

CARL LOUIS COPPOLA

late of the County and State aforesaid, on the 23rd day of February in the year of our Lord One Thousand Nine Hundred and Seventy-Three, in the county and state aforesaid

CARL LOUIS COPPOLA, did then and there possess or have under his control, more than five grams of a drug controlled by Chapter 404.001, Florida Statutes (Florida Drug Abuse Law), to-wit: Cannabis, commonly known as Marijuana.

Contrary to the statute in such case made and provided and against the peace and dignity of the State of Florida.

(signed)
Joseph P. D'Alessandro
State Attorney, Twentieth Judicial Circuit
State of Florida

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA.

STATE OF FLORIDA)
vs) CASE NUMBER 73-107-CF-A-01
CARL LOUIS COPPOLA)

MOTION FOR PROTECTIVE ORDER 3.220(h)

Pursuant to rule 3.220(c) Matters not subject to disclosure

(1) Work Product

(2) Informants

Comes now, Robert R. Hagaman, Assistant State Attorney, 20th Judicial Circuit of Florida and moves this court for a Protective Order, in the subject case, and as grounds states:

1. The subject case is the result of an investigation conducted by law enforcement officers in conjunction with a confidential informer.

2. The disclosure of the report of the officers involved in the subject case would jeopardize the life and well being of said confidential informer.

3. The disclosure of any conversations with officers and the confidential informer would jeopardize the life and well being of said confidential informer.

(a) Said confidential informer will not be a witness for the State of Florida, at any hearing or trial in the subject case.

4. The report of the investigating officers, prior to 1:00 A.M. February 23, 1973, should be protected from disclosure as said reports would disclose the name of the confidential informer.

(a) Said reports contain no exculpatory information.

(b) The failure to disclose the identity of said confidential informer, or the reports of the officers will not infringe the constitutional rights of the accused.

Wherefore the State of Florida demands that said protective order be granted.

Filed 4/18/73
Margaret T. Scott, CLERK
By_____DC

(signed)
Robert R. Hagaman,
Assistant State Attorney
Twentieth Judicial Circuit

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA

STATE OF FLORIDA)
vs) CRIMINAL CASE NO. 73-107-CF-A-01
CARL LOUIS COPPOLA)

PROTECTIVE ORDER
3.220 (h) FLORIDA RCrp

This cause having come before the Court on the motions of Robert R. Hagaman, Assistant State Attorney, 20th Judicial Circuit of Florida, for a protective order, and the Court having heard testimony of witnesses, argument for the State of Florida, and being otherwise advised in this cause, the Court hereby

FINDS AND ORDERS:

1. That no confidential informants will testify for the State in this cause.
   a. The Court specifically forbids any confidential informants from testifying in this cause.
   b. The State does not have to disclose the identity of any confidential informants nor activities of any confidential informants or officers, in this cause, prior to 1:00 A.M., February 23, 1973.
2. That the constitutional rights of the Defendant, Carl Louis Coppola, will not be infringed by the non-disclosure of the identity or activities of any confidential informants nor the activities of any officers in this cause, prior to 1:00 A.M., February 23, 1973.
3. That nothing exculpatory is contained in the testimony or the activities of the officers or confidential informants prior to 1:00 A.M., February 23, 1973.
   a. No disclosure will be made by officers or confidential informants of activities or conversations prior to 1:00 A.M., February 23, 1973.
4. The Court further notes that there is a case pending in this Court: to-wit: State of Florida vs. Arthur Raymond Yarosh, Collier County Criminal Case No. 73-108-CF-A-01, who was arrested at the same time as Carl Louis Coppola.
   a. The information received by the Court in the State of Florida vs Carl Louis Coppola, shall be equally available to the Court in the event the State moves for a protective order in the case of the State of Florida vs. Arthur Raymond Yarosh.

DONE AND ORDERED this 4th day of May, 1973.

(signed)
Harold S. Smith
Circuit Judge

Filed 5-4-1973
Margaret T. Scott, Clerk
by_____DC

A.9 [Excerpts]

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA. CRIMINAL ACTION

STATE OF FLORIDA,)

Plaintiff)

–vs–

CARL LOUIS COPPOLA,)

Defendant)

DEPOSITION OF RALPH CUNNINGHAM

Upon oral examination, taken by counsel for the Defendant on May 4, 1973, at the Collier County Courthouse, Naples, Florida, before Joseph F. Sineno, Acting Official Court Reporter, 20th Judicial Circuit of Florida.

APPEARANCES:

ROBERT HAGAMAN, Assistant State Attorney, 20th Judicial Circuit of Florida, Naples, Florida: representing the Plaintiff.

ROBERT T. ADAMS, JR., Attorney at Law, Fort Lauderdale, Florida, representing the Defendant.

MR. HAGAMAN: Today we had an in camera hearing before Judge Smith under the provisions of the Florida Rules of Criminal Procedure, 3.22. The Court heard testimony, witnesses and arguments from the State, was otherwise advised and an order was entered into. I ha.. given Robert Adams, Attorney for Defendant Carl Louis Coppola, a copy of the protective order and he has indicated that his testimony will be in accord, or the questions seeking testimony from the officers will be in accord with the order and the order was filed today in this case. And I think at this point we can proceed from there with questions of Ralph Cunningham.

MR. ADAMS: Well as much as we are putting this on the record, I am saying for the record that I am Robert Adams, Attorney for the Defendant. I still haven't had time to read this order. I will do so right now. It may be in view of the order that we are not even going to proceed, if this means that I am prohibited from inquiring to any earlier than one A.M. Give me a couple of minutes to read this thing. And particularly under the statements that the Assistant State Attorney– they are like in the nature of a threat that I am

not allowed to inquire into certain things which may be stated in the order. Let me read it.

MR. HAGAMAN: You are free to characterize this as an order–

MR. ADAMS: Well, you don't mind if I read it? I assume this is in the nature of a threat and I intend to read it at this time. It was delivered just a few minutes ago in the spirit of cooperation. I have read the order and I certainly intend to comply with it. Mr. Hagaman, if I get close, make the proper objection.

MR. HAGAMAN: Yes, sir.

Thereupon,

RALPH CUNNINGHAM,

having been first duly sworn, upon his oath testified as follows:

DIRECT EXAMINATION

BY MR. ADAMS:

Q Sir, would you state your full name?

A Ralph F. Cunningham.

Q Mr. Cunningham, you are an officer of the Sheriff's Department here in Collier County? Well, state your official position.

A I am an investigator in charge of criminal intelligence for the State Attorney, Twentieth Judicial

Circuit. And at the time of this case I was employed by the Sheriff's Department.

Q Is that the Sheriff's Department of Collier County?

A Yes.

Q And at that time were you a bonded deputy, to your knowledge, with the authority to make arrests, pursuant to a deputy sheriff's authorities as set out in the statutes?

A Yes, sir.

Q Are you at this time to your knowledge still an officer of the law of the State of Florida authorized to make arrests?

A Yes, sir.

Q But not directly in the employ of the Collier County Sheriff, as I understand it?

A That is correct. I am still a deputy of Collier County, Sheriff's Department.

Q Going back to February, specifically I believe February 23, of 1973, about 4:00 in the morning, four A.M., did you have occasion to meet a man named Mr. Coppola?

A No, sir.

Q Did you have anything to do with the arrest of this individual at about that time who was subsequently

identified as Coppola, Carl Louis Coppola?

A No, sir.

Q Are you aware of the fact that there is a case pending in Collier County, Twentieth Judicial Circuit of the State of Florida versus Carl Louis Coppola, number 730107-CF-A-01 alleging substantially a narcotic violation?

A I will have to see the numbers. I will have to look at it.

Q I show you a copy of the information which I believe corresponds with the number. I may have the number wrong, the information against Carl Louis Coppola alleging more than five grams of a substance.

A That is correct, there is no number on this.

Q Do you have any knowledge of the charge that I have just told you?

A Yes.

Q Was that as a participant in the arrest of Carl Coppola?

A I had no direct participation other than the supervision of the case.

Q Because of the protective order which I was made aware of just before we started and you heard me talk about with the Assistant State Attorney present, it appears that at this time I am prohibited from asking

officers anything that occurred prior to one A.M. on February 23, '73, so that is why I am trying to nail it down, because the orders specifically say in paragraph 1 and 2 that I cannot inquire into the activities of informant or officers in this cause prior to one A.M. on February 23, '73. And then again it uses the same phraseology. So I am asking you to try to limit it from that time on after one A.M. on the 23rd. Did you have anything to do as a supervisor or in the arrest of Mr. Coppola and the subsequent charge which you recognize now by way of this copy of an information shown?

A Yes, I did.

Q Just very briefly would you summarize and tell me what you had to do with the arrest of Mr. Coppola and the filing of the charge?

A I had information that marijuana was in fact at this abandoned newly-constructed airport and I set up a surveillance, using four officers directly on the marijuana and three other officers in a surveillance position, approximately three quarters of a mile away. And basically I laid out a plan they were to follow and they conducted this surveillance for approximately four hours and where your Defendant and another subject was subsequently arrested with your Defendant by the

MR. HAGAMAN: We should establish if you know he can ask the jailer. Don't tell him something that you have copies of. If you want to know we will get the jailer up here. He doesn't want you to guess either.

WITNESS: I was saying, get the jailer's log with the records of telephone calls that are made out of the jail.

BY MR. ADAMS:

Q Were you the officer who supplied sworn testimony for the basis of the filing of a formal charge in this case which the court denied to dismiss the information on the basis that a motion of not guilty had been filed and read, thereby waiving any defects?

MR. ADAMS: Are you saying that I can't ask if he was the officer or not?

MR. HAGAMAN: That's right. the judge is here.

MR. ADMAS: I will pursue it at the appropriate time, don't worry.

BY MR. ADAMS:

Q Have you, at any time since one A.M. on February 23, made a sworn statement with regard to the case of the State of Florida against Carl Louis Coppola which I am talking about; yes or no?

A Yes.

Q Did you at any time after that hour see Coppola commit any offense, you personally?

A No, sir.

Q Did you have an occasion to see yourself any evidence that was gathered at the time of the arrest which you feel has some connection with this case?

A Yes, sir.

Q When did you first see the evidence that was gathered?

A Approximately four, 5:00 in the morning whenever.

MR. HAGAMAN: Is the question when was the first time you saw it after one or the first time he ever saw it?

MR. ADAMS: I am directing all of my questions to after one A.M. of February 23 because of the protective order, so if there is any problem I don't mean to elude, this is after that time.

Q When did you see the evidence that was gathered in connection with this case?

A The morning of April 23, 1973 or approximately eight A.M.

Q A little while after Coppola had been brought into custody?

Q Is that common film?

A Sanitary, National Sanitary Containers.

Q Non-destructible junk, pollutes the world?

A Right.

Q And with regard to that evidence that you saw and apparently was taken in connection wth this case, do you know who had taken care of it at that time?

A At that time, I took charge of the evidence. Per se, not physically the evidence, it was locked in the evidence locker by Detective Mills when it was seized. Being the supervisor of the case, the evidence was in fact turned over to me upon which time I turned it over to the lab for analysis and storage.

Q Storage which I believe is probably in the West Palm Beach area?

A That's right.

Q You were the supervisor and you turned it over to the appropriate people for analysis and storage?

A That's correct.

MR. ADAMS: Now, in view of the protective order referred to prior to the taking of the deposition, I will have no further questions of this officer. But I want the state attorney to know in the record that I intend to pursue my right to inquire of at least the officers and their activities

which might have some bearing on this case and my ability to properly defend with reference to the activities of the officer prior to one A.M., February 23, 1973, if relative to this matter. Go ahead.

MR. HAGAMAN: No questions. We waive the reading and the signing of this deposition.

* * * *

I, Joseph F. Sineno, Acting Official Court Reporter, authorized to take this deposition by stipulation of the parties, hereby certify that the witness was sworn by an officer duly authorized to administer oaths under the laws of the State of Florida; and that this transcript is a true record of the testimony given by the witness.

(signed)
Joseph F. Sineno, Acting Official Court Reporter, Twentieth Judicial Circuit of Florida.

A.9(a)

IN THE CIRCUIT COURT OF THE 20TH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

CARL LOUIS COPPOLA,

Defendant.

CASE NO. 73-107-CF-A-01

MOTION TO DISSOLVE OR MODIFY ORDER OF PROTECTION

COMES NOW the Defendant by and through his undersigned attorney and respectfully moves this Honorable Court to dissolve or modify the Order of Protection entered on May 4, 1973, and as grounds therefor would respectfully show:

1. The aforesaid Order was entered without notice to the undersigned attorney.

2. That although the undersigned attorney may not be entitled to be present at the taking of testimony regarding motion for an Order of Protection, it is inherent right to be present at a hearing to argue the applicable law and the failure to provide that right is a violation of substantive and procedural due process.

3. That depositions were scheduled starting at 2:00 p.m., May 4, 1973, in the above cause by the undersigned attorney and the Protective Order was delivered to said attorney at approximately 2:00 p.m. on that date by the Assistant State Attorney.

4. That it is impossible for the Defendant to properly prepare a defense without the right to inquire of the police officers involved as to the circumstances surrounding the arrest and matters relevant to the alleged charge.

Filed 5-14-73

(signed) J. D'Amico

5. That the right of discovery is an inherent right and protected by the Florida Rules of Criminal Procedure, particularly to determine the true factual situation and to see which defenses are applicable, such as "entrapment".

6. That by restricting the Defendant's right to inquire as to the affidavits of officers, his constitutional protections are violated.

WHEREFORE the Defendant respectfully moves to dissolve or modify the Order of Protection filed in the above cause.

(signed)
ROBERT T. ADAMS, JR.
Attorney for Defendant
1040 Bayview Drive
Fort Lauderdale, Florida 33304
565-4858

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion was furnished to the State Attorney, Collier County Courthouse, Naples, Florida, by mail this 11th day of May, 1973.

(signed)
ROBERT T. ADAMS, JR.

A.10

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA

STATE OF FLORIDA)

vs.) CASE NO. 73-107-CF-A-01

CARL LOUIS COPPOLA)

ORDER DENYING MOTION TO DISSOLVE
OR MODIFY ORDER OF PROTECTION

This cause having come before the Court on the motion of Robert T. Adams, Jr., Attorney for the Defendant and the Court having heard argument and being otherwise advised in this cause, the Court does hereby deny Defendant's Motion to Dissolve or Modify Order of Protection.

DONE AND ORDERED this 5th day of July, 1973.

(signed)
HAROLD S. SMITH
Circuit Judge

Filed 7-12-73
Margaret T, Scott, CLERK

By J. D'Amico DC

A.10(a)

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA

STATE OF FLORIDA)
Plaintiff,)
--vs--) CASE NO. 73-107-CF-A-01
CARL LOUIS COPPOLA,)
Defendant)

TRANSCRIPT OF PROCEEDINGS

Before the Honorable Harold S. Smith, Judge of said Court, at a motion of the above-styled action held in the Collier County Courthouse, Naples, Florida on July 5, 1973.

APPEARANCES:

ROBERT R. HAGAMAN, Esq.,
Assistant State Attorney,
Naples, Florida; Attorney
for Plaintiff.

ROBERT T. ADAMS, JR., Esq.,
Fort Lauderdale, Florida;
Attorney for Defendant.

MR. HAGAMAN: On the 4th day of May of 1973, you signed a protective order under Rule 3.220, Subsection H of the Florida Rules of Criminal Procedure protecting the State with its case against Carl Louis Coppola from disclosing certain information which the State considered to be protected under the rules. In an in camera hearing, you made a determination and entered the rule.

Mr. Adams is here today representing Carl Louis Coppola. He has made a motion to dissolve or modify the order of protection.

COURT: Very well. Let's hear it.

MR. ADAMS: Your Honor, first I would like to say that I do not have any case law directly on this case. Among other things, we have had a very recent rule that provides, as you well know, an in camera inspection by the Court, and the Court shall seal the procedures for later review if necessary.

The gist of my motion to dissolve or modify that order is truly set forth in the motion, that is, by the extent of the order, although I as a former attorney involved in prosecution, I understand and respect certain confidentiality. However, I feel the protective order entered by

Your Honor goes too far or perhaps further than is necessary in this case.

We are not looking for the informant. Certainly I would understand the problem. However, we are asking for the right to inquire of the officers as to the events which led up to this particular arrest, and the order indicates I should not inquire four hours prior to the actual time of arrest which limits discovery to determine if perhaps entrapment is well-founded.

Judge, this is not something we have taken out of the air, but even reviewing, for what they are worth, newspaper clippings which generally are contradicting stories, some of them relate back to the evening hours of Friday, this arrest having taken place in the early morning hours of Saturday. We are on notice for the Defendant that even based on the newspaper stories that something transpired, we should delve into that to determine the legal defenses, if any. That is the only thing that I can advise the Court. The motion was heard by the Court with no notice; if I had been present I would have asked the same thing that I am asking this Court to consider which is equity for both sides. The confidentiality is to not hurt any pending

investigation which I fully understand. But there is also the basic right of the Defendant to properly prepare his defense.

Now, the newspapers I just mentioned were both the Fort Myers News-Press and the Naples newspaper. The Fort Myers News-Press was dated February the 27th, 1973. The article was written by one Susie Graham. There was an article with regard to WBBH-TV which did not much vary, but I believe indicated a story by your Sheriff Hendry that the present early release of a newspaper story on WBBH preclude possible other arrests with regard to the marijuana that was found here in the county.

As the Defendant's attorney, I am on notice that something transpired more than four hours prior to the arrest which is relevant to this particular case and that's what I would like to make inquiry into. Certainly, for the third time, I respect the confidentiality of informants, if there were any in this case.

The rule provides for certain sanctions if discovery procedures are not followed. I do not think it is applicable at this time. The first thing to do was to come to court, enter the order and respectfully request you to modify it to the extent

that I can at least make inquiry of the officers involved as to what led up to this arrest and whether or not they did have agents working on it which would come within the purview of entrapment.

Thank you.

MR. HAGAMAN: Your Honor, I am sure you recall the testimony that was previously given since you were the Judge that had the hearing. I think your order reflects what your opinion was at the time you heard the information. And I think the order says the confidential informants are not goiing to testify and that the constitutional rights of the defendant were not infringed by the non-disclosure. Exculpatory, we did go to the extent of picking a specific time as close to the actual events as possible. We could have a cut-off tiime, but these events prior to the cut-off time would, I think, in the Court's opinion be breaking the vail of protection that we have on our confidential informants, these people that are in a position to work in some situation for the State. Also, Your Honor did not put it in the order and I assumed that it would be for the triers of fact.

You gave the opinion that there was no entrapment. I would also submit that Your Honor

would probably be willing to take judicial notice of the fact that everything that is in the newspapers by the Sheriff or people under his command, since these statements are not under oath, they are not always accurate statements of fact. In fact, they could be a diversion such as the case in Orlando when in fact they were looking for a bomb instead of prisoners.

I think in this case, whatever the Sheriff may have said to the press certainly is not binding in a later action. Whatever the newspapers picked up or whatever came on the TV I do not believe affects us. You heard each and every one of the officers that were specifically involved in this case that had any involvement in the time period we are talking about.

I submit further now that this is a case that certainly comes under the purview of the rule. I think it comes under the rules because of the fact that the Supreme Court has determined that even with liberal discovery, you can only go so far. I think that we fit well within the rule and I think your order spells out exactly what your position is based on hearing testimony.

I submit that the order should stand and

should be modified in no respect whatsoever.

COURT: I deny the motion.

* * *

CERTIFICATE

STATE OF FLORIDA)

COUNTY OF COLLIER)

I, JOSPEH F. SINENO, Notary Public, State of Florida at Large, do hereby certify that at the time of the aforementioned matter, I was Deputy to the Official Court Reporter for the Circuit Court of the Twentieth Judicial Circuit of the State of Florida, and I do hereby certify that the foregoing proceedings were had as set forth on page one hereof, at the time and place also set out on page one hereof; that I was authorized to and did attend said proceedings and report the same in shorthand, and that the foregoing typewritten pages numbered 1 thorùgh 7, inclusive, constitute a transcript of my shorthand report of the proceedings taken at said time.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 18th day of November, 1976.

(signed)
Joseph F. Sineno
Notary Public
State of Florida at Large.

A.11

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA. CRIMINAL ACTION.

STATE OF FLORIDA)

Plaintiff,)

-vs-) CASE NO. 73-107-CF-A-01

CARL LOUIS COPPOLA,)

Defendant.)

TRANSCRIPT OF TESTIMONY AND PROCEEDINGS

Before the Honorable Harold S. Smith, Judge of said Court, at the trial of the above-styled action held in the Collier County Courthouse, East Naples, Florida, on December 4, 1974.

APPEARANCES:

For the State of Florida: ROBERT R. HAGAMAN, Assistant State Attorney, Collier County Courthouse, East Naples, Florida.

For the Defendant: ROBERT ADAMS, Attorney at Law, 1040 Bayview Drive, Ft. Lauderdale, Florida.

THE COURT: All right. Call your first witness.

MR. HAGAMAN: Call Curtis Mills.

Thereupon,

CURTIS MILLS,

a witness produced for and in behalf of the State of Florida, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HAGAMAN:

Q State your name.

A Curtis Mills.

Q And your occupation?

A Deputy Sheriff of Collier County.

Q How long have you been employed with the Collier County Sheriff's Department?

A About four years.

Q Has that been continuous employment?

A Yes, sir.

Q When did you start?

A I started in the first part of the year 1970.

Q Were you employed by the Collier County Sheriff's Department on the 23rd of February, 1973?

A Yes, sir, I was.

Q Well, you heard–I mean, perhaps the law enforcement agencies destroyed it?

A I couldn't tell, sir; I don't know.

Q They didn't put it back on the street, I hope?

A I turned it over to Ralph Cunningham. That is the last physical contact I have had with it.

Q Until today?

A Yes, sir.

Q That box over there–I'm a little premature, but did you ever see that before while you were up there?

A No, sir.

Q And you have no knowledge of that that you know of?

A No. It means nothing to me.

Q Okay. This surveillance that was set up, did you all have a briefing on it, that is, you and your fellow officers?

MR. HAGAMAN: Object to that. We are talking about any conversation or briefings--

THE COURT: What was the cut off time and date on that?

MR. HAGAMAN: 1:00

MR. ADAMS: 1:00 A.M.

THE COURT: 1:00 A.M. on that morning?

MR. ADAMS: Yes.

THE COURT: Anything that took place prior to that day at 1:00 A.M. you do not have to answer.

A At 1:00 A.M. I was on my way to the airfield.

BY MR. ADAMS:

Q Okay. You realize that there has been some pretrial proceedings wherein that was the cut off time that was established, 1:00 A.M.–

A Yes.

Q –in this case. So that about that time you believe you were on the way out to the airfield to conduct a surveillance of stuff that you knew at 1:00 A.M. had been stashed out there?

A I knew when I arrived there it would be there.

Q You knew that it would be there when you got there?

A Yes.

Q Are you familiar with the phrase "entrapment"?

MR. HAGAMAN: Objection, Your Honor. That is a legal affirmative defense that must presuppose certain elements. And to bring it out in that type of question is certainly objectionable.

THE COURT: He can answer if he knows the answer.

A Yes, I am familiar with that.

BY MR. ADAMS:

Q In your experience, will you tell the Jury what it means to you as an officer of the law?

A Entrapment would be a process as to where an officer would cause an individual to be involved or commit a crime, present him with the opportunity and ability and so forth to commit this crime when he would not have had this otherwise. In a nutshell this is the way I see entrapment.

Q Officer, let me compliment you. That is a great definition. You have received that from your training and experience?

A That is the way I break it down.

Q You try to avoid that situation if possible?

A Always.

Q During the course of everything that happened from 1:00 and afterward, was there anything else that occurred which you can relate to this Jury wherein Carl Coppola might have known that that stuff in those sacks out there was illegal contraband, any statement, any tangible evidence, any notes, anything at all?

A From observing him, it was obvious to me he was searching for something that he didn't want anybody else to know he was searching for.

Q In the middle of the night?

A In the middle of the night driving without his lights on.

Q You have Carl Coppola driving or the fellow in the light jacket?

A When he drove the truck back to where it was he still didn't turn the lights on.

Q There was question who was driving the truck back, the guy in the light or dark jacket?

A There was no doubt in my mind.

Q Coppola went for the truck, is your statement?

A Yes.

Q And I believe you mentioned that there were three sacks loaded in the truck at the time that you identified yourself?

A Yes, sir.

Q And you said you saw this Defendant Carl Coppola pick up some and load it, is that what you recall?

A Yes.

Q What did you see Carl Coppola load in that pickup truck that morning?

A A sack like one of these. (Indicating)

Q One sack?

A He had picked up one sack, loaded it in the truck, returned into the woods and picked up another sack and was about two-thirds of the way back to the truck when we--

presence of the same Jury?

MR. ADAMS: Yes

MR. HAGAMAN: The State will so stipulate.

THE COURT: Please proceed.

MR. HAGAMAN: I believe we just finished with Officer McCarty, and therefore the State would call as its next witness Ralph Cunningham.

THE COURT: You were sworn this morning?

THE WITNESS: Yes, sir.

THE COURT: Take the stand.

THEREUPON,

RALPH F. CUNNINGHAM,

a witness produced for the State, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HAGAMAN:

Q Would you state your name, please?

A Ralph F. Cunningham.

Q Your occupation?

A Chief Intelligence Division, State Attorney's Office.

Q What was your occupation on the 23rd day of February, 1973?

A I was employed by the Collier County Sheriff's Department, Narcotics Division.

A Yes, I am.

Q And didn't you just say you weren't aware of any court proceeding on Urish pending?

A You didn't say that. I'm not aware of him being on the docket to be tried at any time. I'm not aware of that. As far as I know he is not, he is not on the docket to be tried.

Q What happened to him?

MR HAGAMAN: Objection. It has no bearing on this case.

THE COURT: Sustained.

BY MR. ADAMS:

Q Getting back to your part in this particular case, you are now the Chief Intelligence of what, that means you are kind of the Intelligence Officer for the State Attorney's office?

A That is correct, sir.

Q In that position you try to assist the State Attorney, the assistants and some of the work liason with other law enforcement agencies and keep track of what is happening and keep the show on the road?

A That is correct, sir.

Q You try to get a good job done for law enforcement?

A That is correct.

Q In your teaching and schooling you learn if you have liason with other smaller agencies it sometimes makes

for better law enforcement, doesn't it?

A That is correct.

Q At least hopefully. With regard to this case, what was your position on the 23rd of February of 1973? Was this your case, were you the head officer for this case?

A Yes, sir, I was.

Q Were you the one who, in working with your fellow officers, set up this surveillance procedure that was followed wherein Coppola and Urish were arrested?

A Yes, sir, I did.

Q And I believe you testified you saw these sacks here in evidence before the arrest of Coppola. Now I'm kind of trying to be cautious. There is a Protective Order which has been referred to by the Court. But did you see the sacks prior to the actual arrest of Coppola?

A Yes, sir, I did.

Q And it has been testified to that 13 sacks were put–not put, but rather stashed in a particular location out here at an airport. Were you aware of that?

A Yes, sir.

Q And as the head officer on this case, were you responsible for either yourself or officers under your direction stashing those sacks out at that location?

MR. HAGAMAN: Objection, Your Honor. I submit that the Protective Order picks up

from 1:00. If we are talking about 1:00, anything he did after that time–anything prior to that time is covered by the Protective Order.

THE COURT: If it took place after 1:00, I will allow the question, otherwise I won't allow it. If the answer to that question can be answered with relation to any time after 1:00 A.M. the 23rd of February, why, you can answer it. Otherwise, you don't have to.

THE WITNESS: It cannot be.

THE COURT: All right. Sustain the objection.

BY MR. ADAMS:

Q At least as of 1:00 A.M. on the 23rd of February, you were aware of the fact that there was surveillance being conducted on a stash in the vicinity of an airport?

A Yes, sir, I was aware of and I was in charge of it.

Q And you were in charge of it?

A That is correct.

Q Did you have any conversation with the Defendant Coppola in the early morning hours or any time thereafter up until today? I'm not talking about fishing. I'm talking about something that would have bearing on this charge.

A No.

Q I know you may have seen him around the hall here and I'm not talking about that. Were you a party to this, did you overhear any conversation with other officers that Coppola may have had?

A No, I didn't.

Q Well, being in charge of this situation, did you attempt to interview the Defendant Coppola?

A Yes. When he was in the jail--

Q The answer is "yes"?

A As far as attempt.

Q Did attempt to interview the Defendant Coppola?

A He was asked.

THE COURT: Just answer the question yes or no.

A Yes, I attempted.

Q Will you tell the folks what you did in attempting to interview Coppola?

A I asked my men if he had anything to say, if he wished to give a statement.

Q Excuse me. Was that part of your answer, you asked your men if he had anything to say?

A Right. When I cam in I asked the other officers who had arrested him if in fact he wished to make a statement and they had advised me he did not.

And at that time I talked with Urish and I believe Mr. Coppola, too, and asked him if he had anything to say and he did not. So that was the end of the conversation.

Q At the time--and you used kind of a qualifying statement there. You believe you talked to Coppola--can you tell us for sure if you went to Carl and said, "Hey, do you want to tell us about this situation," or anything like that, or aren't you sure?

A No. I would say that both of the persons were there, both Urish and Coppola. And I directed the questioning to both of them.

Q Directed to both of them so you are referring to a question to both of them and about the same time and place?

A Right.

Q Where was that time and place?

A That was the morning of the 23rd in the jail, in the Collier County Jail while they were being booked in.

Q You mean in the vicinity of the booking desk?

A That is correct.

Q You teach law enforcement, narcotics, at least. You have been in about ten years. You mean on this situation you officers allowed both of these Defendants who were in custody to be in the same area together while you were questioning them?

A I think you are misconstruing something. First of

Thursday Morning, December 5, 1974

9:00 A.M.

DEFENSE TESTIMONY

(The Defense, in order to maintain the issues on its part, presents the following testimony.)

MR. ADAMS: If it please the Court, before the Jury comes in this morning, the State has rested and I made a Motion for a Directed Verdict of Acquittal which was denied by the Court and at this time I just want to ask again for the Court if that Protective Order issued by the Court still stands?

THE COURT: Yes.

MR. ADAMS: Nothing prior to 1:00 A.M. February 23, 1973 by an informant or officers of the law should be known?

THE COURT: Exactly

MR. ADAMS: In view of that order of protection, The Defendant will rest.

THE COURT: Very well.

MR. ADAMS: I did have the Sheriff and other Deputies subpoenaed and on call, as the Court knows.

THE COURT: Yes.

MR. ADAMS: And it would be futile--

THE COURT: Very well. That forecloses any possibility of rebuttal by the State.

(Jury was brought in)

THE COURT: Will counsel for the State and counsel for the Defendant stipulate to the presence of the same Jury as yesterday?

MR. ADAMS: Yes, sir, Your Honor, for the Defendant.

MR. HAGAMAN: The State will so stipulate.

THE COURT: Very well. May we proceed?

* *

THE COURT: Ladies and Gentlemen of the Jury: You have listened carefully to the evidence and the argument of counsel. I now ask of you the same careful attention to the law, as determined by the Court, which you must apply to the facts as you find them from the evidence.

You alone, as jurors sworn to try this case, must pass on the issues of fact, and your verdict must be based solely on the evidence or lack of evidence and the law as it is given to you by the Court.

IN THE CIRCUIT COURT
Twentieth JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR Collier COUNTY

State of Florida
vs.
CARL LOUIS COPPOLA

CASE NO. 73-107-CF-A-01 HSS

JUDGMENT

YOU, Carl Louis Coppola , being now before the Court, attended by your attorney, Archie M. Odom , and you having (x) been tried and found guilty of ( ) pleaded guilty to ( ) pleaded nolo contendere to Possession of More than Five (5) Grams of Marijuana as charged.
as set forth or included in the ( ) indictment (X) information filed in this court, the court adjudges that you are guilty of said offense.

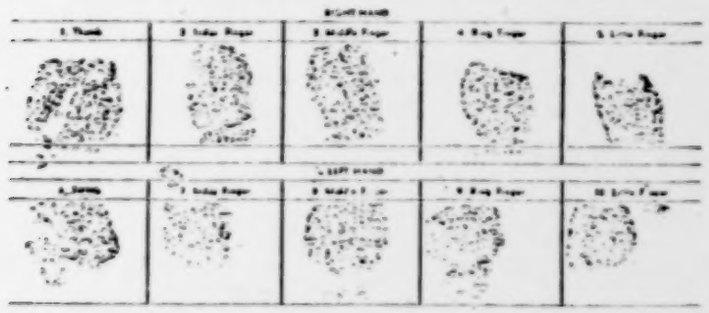
DONE AND ADJUDGED in open court at Naples , Florida, this the 14th day of January 1975.

(signed) Harold S. Smith
JUDGE

Inquiry having been made of the defendant why sentence should not now be imposed and the defendant saying nothing that could influence the Court in its decision, it is further ADJUDGED that said defendant be sentenced to:

Five (5) YEARS State Prison with credit given for time served with Credit for time served of forty-one (41) days

FINGERPRINTS OF DEFENDANT



I hereby certify that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant, Carl Louis Coppola , and that they were placed thereon by said defendant in my presence, in open court, this the 14th day of January , 1975.

Filed in Open Court this 14th day
of January 1975.
Margaret T. Scott, Clerk

(signed) Harold S. Smith
JUDGE

By:_____D.C.

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA. CRIMINAL ACTION.

STATE OF FLORIDA,)
Plaintiff,)
--vs--) CASE NO. 73-107-CF-A-01
CARL LOUIS COPPOLA,)
Defendant.)

TRANSCRIPT OF PROCEEDINGS

Before the Honorable Harold S. Smith, Judge of said Court, at a hearing of the above-styled action held in the Collier County Courthouse, East Naples, Florida, Commencing on January 27, 1975.

APPEARANCES:

For the State: ROBERT R. HAGAMAN, Assistant State Attorney, Collier County Courthouse, East Naples, Florida.

For the Defendant: ARCHIE M. ODOM, Esq. of the Law Firm of FARR, HAYMANS, MOSELEY & ODOM,
115 West Olympia Avenue,
P. O Box 635,
Punta Gorda, Florida 33950.

A Yes.

Q And you have also been supporting the two children that your present wife has?

A Right, yes. In fact, if I may go a little further. I was supposed to, I just found out Saturday about it, I was supposed to take the custody over of my boys out in Colorado. And up until this happened, then as soon as I got out I was supposed to get them and I found out this weekend they ran away from home and I guess they are back home now. I'm not sure. But they just can't take it. They can't stay out there, so I'm supposed to bring them back and live with me.

MR. ODOM: No further questions.

THE COURT: Cross examination.

CROSS EXAMINATION:

BY MR. HAGAMAN:

Q Prior to the time that you were tried in this case you moved for a continuance and you waived speedy trial. Is that true?

A I guess my attorney did, yes. Back in July, I think of '73.

Q Was that with your accord or did he do that against your will?

A No, that was with my accord.

Q Then on December 5th of 1974 I believe that

was the day of the trial, anyway, if I am incorrect, the date you were tried for this case you had previously pled not guilty; is that correct?

A I believe the Court pled us not guilty.

Q All right. And then you went to trial and there was a conviction, correct?

A Correct.

Q And then you subsequently were interviewed by the probation and parole supervisor; is that right?

A Yes, sir.

Q And after the matter was over, in an effort to cooperate with them you explained to them that you had come over here to get this marijuana; is that correct?

A Yes, sir.

Q And that you didn't have to pay any money out front to get it?

A The way I explained it to him is--

MR. ODOM: If it please the Court, I will object to the testimony of what he's told the probation officer in the course of the investigation.

THE COURT: On what grounds? I assume you are attempting to impeach him, aren't you?

MR. HAGAMAN: He alluded to what was not included and I'm alluding to what is on the basis of his motion that he should be granted--

THE COURT: What I am talking about, the purpose of your question is to impeach this witness or something?

THE WITNESS: I will answer his question.

MR. ODOM: No, you be quiet.

MR. HAGAMAN: There is the probability of impeachment, but also, in accord with the Younghans case I want to pursue what the standard was and I think his answer, although I submit I don't want to use it or any other question, because he has been convicted of it and pled not guilty and I want to go into what he told the probation officer as to if he did or did not do it.

THE COURT: Overrule the objection. Go ahead and answer.

A You want me to tell the whole story what I told the probation officer?

BY MR. HAGAMAN:

Q No. I want to know in answer to my question if you in fact came over to pick it up and you were

caught and didn't have to pay any money to get it?

A But that is not all what I told him.

MR. ODOM: If it please the Court. I want to tell what we will be getting into and that is if the Defendant committed the act charged with and if he has any defense. If he goes into part of it. I want the Court to let me go into the other part, which is entrapment.

MR. HAGAMAN: That is not a viable defense after a trial.

MR. ODOM: We tried to raise it during the trial.

MR. HAGAMAN: No, sir. It was not raised during the trial. I tried the case and the Judge was there and it wasn't raised.

THE COURT: It wasn't raised to my knowledge.

MR. ODOM: You couldn't go into it because of what happened prior to a certain hour. And the only way you can prove entrapment is what happened prior to surveillance.

MR. HAGAMAN: I submit the entrapment goes out the window when we are talking right

here.

THE COURT: All we are talking about here is whether or not this man should be held without bail or granted bail for appeal. What is the relevancy of the question? I'm curious.

MR. HAGAMAN: I don't know. His answer is concerned with whether or not the errors are merely technical procedure errors or if there is any substance to them. If we have a man in jail admitting that he committed a crime in addition to his having pled not guilty and been found guilty during the time he is waiting to see if there is any technical error, he is not having his costitutional rights because--

THE COURT: The Court is aware and I think certainly knows that a Jury found this man guilty beyond a reasonable doubt.

MR. ODOM: All we say is we have good grounds for appeal. The District Court will make that decision.

THE COURT: I know it is not up to me. I see no relevancy other than the matter of impeachment.

MR. HAGAMAN: I would like to have the answer for that possible purpose.

THE COURT: All right. Answer the question for that limited reason.

A Do I have to answer part of a question or do I have to answer the whole question?

BY MR. HAGAMAN:

Q I would like you to answer as simply as you can. If you feel you want to elaborate you can do that.

A I want to say what I did tell the man.

Q Fine.

A And the reason that I did come over here.

Q Fine.

A The reason I did come over here is because the people came to me and told me to come over here and get it and the people that told me to get it were working for this Collier County Sheriff's Department as informers and entrapment and I told him that along with this statement. I didn't say I come over and got it and didn't have to put any money up. The people asked me to come over and pick it up and the people who asked me this were working for the police department over here. If that is part of the thing, fine.

Q Is that the only time you have ever bought or

sold drugs in your life?

A I'm not on trial for anything besides here.

Q I know you are not.

MR. ODOM: Object. It is immaterial to the hearing.

MR. HAGAMAN: He is answering questions with a self-serving statement not contained in here and I ought to be able to impeach him on something on the record.

THE COURT: Overrule the objection.

BY MR. HAGAMAN:

Q Have you?

A What are you talking about now?

Q You were saying on that particular occasion you came over here because in your opinion you were told to come over here by people you believed were working as informants for the Collier County Sheriff's Department?

A Yes, I do.

Q Has there ever been any occasion in your life prior to today where you bought or sold drugs other than that occasion?

MR. ODOM: I instruct the Defendant not to answer that question because of Article 6 of the Constitution of the United

States and I think Article 5. He should not be required to answer in this type of hearing where he is on the stand for a limited purpose of establishing his right to bail.

THE COURT: I recognize his rights under the Fifth. Go ahead, Mr. Hagaman.

MR. HAGAMAN: And you are instructing him not to answer that question?

THE COURT: Right.

MR. HAGAMAN: Fine. I will move on to another.

BY MR. HAGAMAN:

Q You indicated in answer to a question you were married presently?

A Yes.

Q Are you legally married?

A Yes.

Q When were you married?

A 1970.

Q Are you presently married to the same person you were married to in 1970?

A Yes.

Q Where were you married?

A Broward County.

Q Do you recall where in Broward County?

A Yes.

Q Where?

A It was--I can't tell you the exact address. It was a chapel in Wilkes Manors.

Q Okay.

MR. HAGAMAN: I have no further questions.

THE COURT: Anything else?

MR. ODOM: I have no further questions.

THE COURT: Do you have any further evidence?

MR. ODOM: No, sir, as long as the Court will renew the motion I previously filed. It sets out what we think would be the grounds for appeal and raises a question that is debatable. I will tell the Court we have already ordered the transcript and are not asking for a delay as far as filing.

THE COURT: I believe the District Court said you were not going to get it anyway.

MR. ODOM: I believe I can get an extension. I will not ask for it.

THE COURT: Does the State have anything?

MrR. HAGAMAN: Yes. I would like to renew this motion briefly.

THE COURT: Have you filed an Assignment of Errors, Mr. Odom?

MR. ODOM: Not yet. I have twenty days.

THE COURT: I understand. Go ahead, Mr. Hagaman.

MR. ODOM: If it please the Court. In the motion I filed in the District Court I pointed out what I considered two grounds, and at that time I did not have the transcript and I just got it and haven't read it.

THE COURT: What is it you cite in that?

MR. ODOM: One is the Protective Order of the Court where the defense was not allowed to go back of a particular time in interrogating. And the other would be the fact that it was sixteen months from the date of arrest to the date of trial, recognizing the fact that the Defendant made a motion for continuance. I recognize that, but there is more to the speedy trial rule than six months.

THE COURT: We had a very good argument on that that day.

MR. ODOM: I figured you did. That is why I didn't argue it any more.

THE COURT: What do you have, Mr. Hagaman?

MR. HAGAMAN: First of all, Your Honor, the petition indicates that they are of the opinion that there was error as to the Protective Order. Your Honor, to follow that argument would have to say that he in fact was in error, Your Honor, since you were the Judge that heard the motion and granted the Protective Order. And I submit it was not in error and I am sure the Court would agree, based on what you heard, you granted the Protective Order and it was not in error.

They also indicate in the motion that Mr. Adams previously raised the speedy trial queston and I think the Court as well as the State considered that so blatantly dilatory that it was almost absurd at the time because an examination of the motion previously by Mr. Adams, he said his witnesses were out of the State and out of the Country. Not on

STATE OF FLORIDA)

COUNTY OF COLLIER)

I, Millicent E. Wilkinson, CSR, Acting Official Court Reporter, for the 20th Judicial Circuit of the State of Florida, do hereby certify that a hearing was had in the cause styled in the caption hereto, on Page 1 hereof; that I was authorized to and did attend said hearing and report the proceedings had therein, including the testimony, fully and accurately in shorthand, and that the foregoing typewritten pages numbered 1 through 24, inclusive, constitute a correct transcript of my shorthand report of the testimony and proceedings taken at said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of January 1975.

(signed)
Millicent E. Wilkinson, CSR,
Acting Official Court Reporter,
20th Judicial Circuit of Florida.